

Information Item: Conducting Natural Resources Commission meetings by electronic means

In 2012 public agencies, such as the Natural Resources Commission, were authorized by Indiana Code § 5-14-1.5-3.6 (attached) to allow members to participate in meetings electronically under prescribed conditions. The agency must comply with certain minimum conditions and is required to adopt and post to its website a policy controlling member participation by electronic means. Ind. Code § 5-14-1.5-3.6(f) & (h). The agency's policy may be tailored in various ways to address the needs and interests of the agency and the customizations, in some instances, may establish conditions more stringent than requirements set forth in the statute. Ind. Code § 5-14-1.5-3.6(g). The following is an outline of requirements applicable to the NRC along with allowable customizations.

1. Unless the NRC should determine otherwise, a member participating by electronic means is considered to be present; therefore:
 - a. The member participating electronically is counted towards a quorum; and
 - b. The member is allowed to vote. Ind. Code § 5-14-1.5-3.6(e).
2. The conditions that must be met include the following:
 - a. The means of electronic communication must allow:
 - i. the member;
 - ii. all other members participating in the meeting; and
 - iii. all members of the public who are physically present at the meeting location to communicate simultaneously. *Ind. Code § 5-14-1.5-3.6(b).*
 - b. The NRC customization may include a provision that the public may attend at the alternative location from which a member is participating electronically. This is discussed further in section 6, below.
3. If a member is participating electronically all voting must be conducted by roll call. Ind. Code § 5-14-1.5-3.6(c)(2).
4. The minimum number of NRC members who must be physically present is four (4), which constitutes one-third of the total membership. Ind. Code § 5-14-1.5-3.6(c)(1). This minimum number may be increased through the policy adopted by the NRC as discussed in Section, below.
5. Each member is required to be physically present at a minimum of one meeting annually. Ind. Cod § 5-14-1.5-3.6(d).
6. In adopting a policy to control member participation by electronic means the NRC **may** impose any of these additional conditions and/or requirements:
 - a. Establish member request procedures including the requirement that a request be made within a certain number of days before the meeting.
 - b. Establish a limit upon the number of members who may participate by electronic means. This would alter the requirement set forth in Ind. Code § 5-14-1.5-3.6(c)(1) for a minimum of four (4) NRC members to be physically present at a meeting location. (See section 4)

- c. Establish a limit on the number of meetings annually that may be conducted with members participating by electronic means.
- d. Establish a limit for the number of times annually that a member may participate by electronic means.
- e. Modify the impact of Ind. Code § 5-14-1.5-3.6(e) to prohibit a member participating electronically from casting a deciding vote on any official action and/or to allow the member participating by electronic means to vote on official action only if a specified number of members who are physically present at the meeting location concur with the vote of the member participating electronically.
- f. Require a member participating electronically to certify in writing the votes cast by that member within a specified number of days after the meeting.
- g. Provide for member(s) of the public to attend the meeting at a public location from which a member is participating electronically. (See section 2) If this is established in the NRC policy there are additional requirements that must be met with respect to the public meeting notice.
- h. Require that a quorum of the members be physically present at the meeting location.
- i. Establish any other “procedures, limitations, or conditions” governing participation of members by electronic means that “are not in conflict with this chapter.”

IC 5-14-1.5-3.6

Electronic meetings of state agencies and charter schools

Sec. 3.6. (a) This section applies only to a governing body of a charter school (as defined in IC 20-24-1-4) and a public agency of the state, including a body corporate and politic established as an instrumentality of the state.

(b) A member of the governing body of a charter school or public agency who is not physically present at a meeting of the governing body may participate in a meeting of the governing body by electronic communication only if the member uses a means of communication that permits:

- (1) the member;
- (2) all other members participating in the meeting;
- (3) all members of the public physically present at the place where the meeting is conducted; and
- (4) if the meeting is conducted under a policy adopted under subsection (g)(7), all members of the public physically present at a public location at which a member participates by means of electronic communication;

to simultaneously communicate with each other during the meeting.

(c) The governing body must fulfill both of the following requirements for a member of the governing body to participate in a meeting by electronic communication:

- (1) This subdivision does not apply to committees appointed by a board of trustees of a state educational institution, by the commission for higher education, or by the board of directors of the Indiana secondary market for education loans, as established, incorporated, and designated under IC 21-16-5-1.

The minimum number of members who must be physically present at the place where the meeting is conducted must be the greater of:

- (A) two (2) of the members; or
 - (B) one-third (1/3) of the members.
- (2) All votes of the governing body during the electronic meeting must be taken by roll call vote.

Nothing in this section affects the public's right under this chapter to attend a meeting of the governing body at the place where the meeting is conducted and the minimum number of members is physically present as provided for in subdivision (1).

(d) Each member of the governing body is required to physically attend at least one (1) meeting of the governing body annually.

(e) Unless a policy adopted by a governing body under subsection (g) provides otherwise, a member who participates in a meeting by electronic communication:

- (1) is considered to be present at the meeting;
- (2) shall be counted for purposes of establishing a quorum; and
- (3) may vote at the meeting.

(f) A governing body may not conduct meetings using a means of electronic communication until the governing body:

- (1) meets all requirements of this chapter; and
- (2) by a favorable vote of a majority of the members of the governing body, adopts a policy under subsection (g) governing participation in meetings of the governing body by electronic communication.

(g) A policy adopted by a governing body to govern participation in the governing body's meetings by electronic communication may do any of the following:

- (1) Require a member to request authorization to participate in a meeting of the governing body by electronic communication within a certain number of days before the meeting to allow for arrangements to be made for the member's participation by electronic communication.
- (2) Subject to subsection (e), limit the number of members who may participate in any one (1) meeting by electronic communication.
- (3) Limit the total number of meetings that the governing body may conduct in a calendar year by electronic communication.
- (4) Limit the number of meetings in a calendar year in which any one (1) member of the governing body may participate by electronic communication.
- (5) Provide that a member who participates in a meeting by electronic communication may not cast the deciding vote on any official action.
- (6) Require a member participating in a meeting by electronic communication to confirm in writing the votes cast by the member during the meeting within a certain number of days after the date of the meeting.
- (7) Provide that in addition to the location where a meeting is conducted, the public may also attend some or all meetings of the governing body, excluding executive sessions, at a public place or public places at which a member is physically present and participates by electronic communication. If the governing body's policy includes this provision, a meeting notice must provide the following information:
 - (A) The identity of each member who will be physically present at a public place and participate in the meeting by electronic communication.
 - (B) The address and telephone number of each public place where a member will be physically present and participate by electronic communication.
 - (C) Unless the meeting is an executive session, a statement that a location described in clause (B) will be open and accessible to the public.
- (8) Require at least a quorum of members to be physically present at the location where the meeting is conducted.
- (9) Provide that a member participating by electronic communication may vote on official action only if, subject to subsection (e), a specified number of members:

- (A) are physically present at the location where the meeting is conducted; and
- (B) concur in the official action.

(10) Establish any other procedures, limitations, or conditions that govern participation in meetings of the governing body by electronic communication and are not in conflict with this chapter.

(h) The policy adopted by the governing body must be posted on the Internet web site of the governing body, the charter school, or the public agency.

(i) Nothing in this section affects a public agency's or charter school's right to exclude the public from an executive session in which a member participates by electronic communication.

As added by P.L.134-2012, SEC.12. Amended by P.L.62-2013,SEC.1; P.L.132-2013, SEC.1; P.L.280-2013, SEC.4.